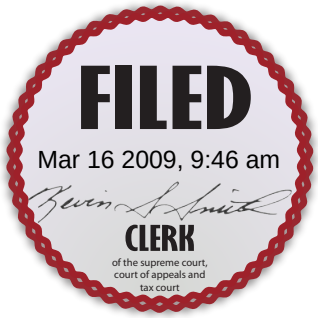

ATTORNEY FOR APPELLANT:

PAUL D. STANKO
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DONTE GILDON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0808-CR-505
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0605-MR-00004

March 16, 2009

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Donte Gildon appeals his convictions for Murder,[1] a felony, Attempted Murder,[2] a class A felony, and Attempted Battery,[3] a class C felony. Gildon argues that the trial court improperly limited his cross-examination of a witness. Finding no error, we affirm.

FACTS

On May 23, 2006, nineteen-year-old Marlon Joshua was standing outside his Gary apartment building with Tameka Foster and others. Gildon pulled up to the group in a white vehicle and began firing a gun at them. Joshua was shot and killed. After the police arrived, Foster and another witness identified Gildon to the police as the person who had shot Joshua.

On May 26, 2006, the State charged Gildon and a codefendant with murder, two counts of class A felony attempted murder, and two counts of class C felony attempted battery. At Gildon's jury trial, which began on June 10, 2006, Foster acknowledged that she had told the police that Gildon was the shooter but claimed that she had been mistaken in her identification. During her direct examination, the trial court held a hearing outside the presence of the jury and admonished Foster to answer the questions posed to her without being evasive and advised her that a failure to do so could result in a contempt finding. When the direct examination was complete, Gildon requested to cross-examine Foster about the effect, if any, of the trial court's admonition. The trial court denied the request.

[1] Ind. Code § 35-42-1-1.

[2] I.C. § 35-42-1-1; Ind. Code § 35-41-5-1.

[3] I.C. § 35-41-5-1; I.C. § 35-42-1-1.

At the trial's conclusion, the jury found Gildon guilty as charged. The trial court entered judgment of conviction on murder, one count of attempted murder, and one count of attempted battery. On July 23, 2008, the trial court sentenced Gildon to sixty years for murder and to five years each on the other two convictions, to run concurrently with each other but consecutively to the murder sentence, for an aggregate sentence of sixty-five years. The trial court suspended three years of the sentence to probation. Gildon now appeals.

DISCUSSION AND DECISION

Gildon argues that the trial court's decision to refuse him permission to question Foster about the admonition violated his rights under the Confrontation Clause of the United States Constitution.[4] Initially, we observe that Gildon neither raised a Confrontation Clause objection to the trial court nor made an offer to prove by questioning Foster outside the presence of the jury. Consequently, he has waived this argument. See Small v. State, 736 N.E.2d 742, 747 (Ind. 2000) (holding that, where defendant did not raise a Confrontation Clause objection at trial, he had waived the argument on appeal); Noble v. State, 725 N.E.2d 842, 846 (Ind. 2000) (holding that, to preserve an issue for appellate review, a defendant must make an offer to prove because without the offer, a reviewing court can only speculate as to what the witness might have testified about the issue in question).

[4] Gildon nominally argues that his rights under Article 1, section 13 of the Indiana Constitution were also violated, but provides no separate analysis of this provision. Consequently, we will not address his argument under the Indiana Constitution. See Abel v. State, 773 N.E.2d 276, 278 n.1 (Ind. 2002) (holding that "[b]ecause Abel presents no authority or independent analysis supporting a separate standard under the state constitution, any state constitutional claim is waived").

Waiver notwithstanding, we observe that to show a violation of the Confrontation Clause, the defendant "must demonstrate that he was prohibited from engaging in otherwise appropriate cross-examination 'designed to show a prototypical form of bias on the part of the witness, and thereby from showing the jury facts from which it could appropriately draw inferences relating to the witness's reliability.'" McVey v. State, 863 N.E.2d 434, 443 (Ind. Ct. App. 2007), trans. denied (quoting Rubalcada v. State, 731 N.E.2d 1015, 1021 (Ind. 2000)). Our Supreme Court has further explained that the Confrontation Clause "only guarantees 'an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" Rubalcada, 731 N.E.2d at 1021 (quoting Pennsylvania v. Ritchie, 480 U.S. 39, 53 (1987) (emphasis in original)). Therefore, this right is not absolute:

> "It does not follow, of course, that the Confrontation Clause of the Sixth Amendment prevents a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness'[s] safety, or interrogation that is repetitive or only marginally relevant."

Thornton v. State, 712 N.E.2d 960, 963 (Ind. 1999) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)).

Here, in the midst of Foster's direct examination by the State, it was evident that she was attempting to evade the prosecutor's questions. The trial judge asked counsel to approach the bench and, out of the jury's hearing, made the following comments:

> I'm getting irritated by this witness'[s] testimony because I get the distinct impression that she's being evasive. She's giving half answers. She's not following counsel's instructions to review that document to refresh her recollection. She simply flipped it over. And I'm not going to have that. Now she's under subpoena to give honest and truthful testimony, and that's exactly what she's going to do or she's going to be in jail out here a lot longer. I think she needs to know that.

Tr. p. 191-92. Following the bench conference, the trial court held a hearing outside the jury's presence, admonishing her to answer the questions posed to her without being evasive. The court also instructed her that, when requested to review a document by the examining attorney, she must do so. The failure to do so, explained the trial court, could result in her being found in contempt. Id. at 198. The jury returned to the courtroom and direct examination resumed. When the direct examination was completed, Gildon conducted a thorough, substantive cross-examination of Foster—during which she continued to insist that Gildon was not, in fact, the shooter. He asked to be allowed to question Foster about the trial court's admonition and the trial court denied his request.

Under these circumstances, Gildon's right to confront Foster was not violated. He met her face-to-face and questioned her at length. The trial court's denial of his request to question her about the admonition was merely a reasonable limit based on a valid concern about confusion of the issues and questions that would have been only marginally relevant. In any event, we note that the admonition was made outside the jury's presence and, consequently, could not have influenced the jurors' evaluation of Foster's testimony. Furthermore, her testimony was solidly favorable to Gildon. Under these circumstances, we find that Gildon's right to confront Foster was not violated.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.